

# WATER DISTRICT #11 BEAR RIVER

## Minutes of the Annual Meeting

February 6, 2007, 2:00 pm

### Attending:

Val Keetch  
Dennis L. Bird  
Paul Keetch  
Lee Ream  
Bill Robison  
Dan Forsgren  
Lyle Swank  
John Homan, Atty  
H. Roger Werner  
Cindy Bird  
Marc Gibbs  
Randy Budge, Atty  
Connely Baldwin  
Everett Miles  
Joe Larsen  
Gale C. Moser  
Regan Wheeler  
Stephen A. Meek  
Lawrence Fox  
John Sample, Atty  
Doug Bornemeier  
Norm Semanko  
Pete Peterson  
Kelly Holt  
Austin Moses

### Representing:

West Fork Irrig.  
Peg Leg  
Kent, West Fork, Peg Leg  
Ream-Crockett Irrig.  
BR Otter & Dingle Irrig.  
Thatcher Irrig.  
IDWR – Eastern  
Idaho Attorney General  
IDWR – Eastern – Idaho Falls  
IDWR – Soda Springs  
Last Chance Canal Co.  
Last Chance Canal Co.  
PacifiCorp Energy  
Last Chance Canal Co.  
West Cache Irrig. Co.  
BRWVA  
Cub River Irrig.  
Preston – Riverdale Irrig.  
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PacifiCorp Energy  
PacifiCorp Energy  
Idaho Water Users Assoc.  
Riverdale – Preston Upper  
PacifiCorp Energy  
Treasurer

Treasurer Austin Moses called the meeting to order and asked for nominations for meeting chairman. Kelly Holt was elected by unanimous vote.

Chairman Holt asked for nominations for the advisory committee. Mr. Gibbs moved to retain same advisory board. Mr. Ream indicated he did not wish to serve. Mr. Gibbs withdrew motion and moved to retain Mr. Baldwin, Mr. Dean Mathews (with Mr. Gibbs as backup) and Mr. Larsen. Motion carried. Mr. Ream nominated Bill Robison to serve from the Montpelier area. Mr. Larsen seconded. All approved.

Chairman Holt asked attorney John Homan to explain the voting procedures for the meeting. Mr. Homan explained that votes could be counted two ways: one person, one vote; or upon request by a water right holder, by the amount of the past five year average

assessment. Mr. Sample, on behalf of PacifiCorp Energy (PCE), moved that the Chairman ask before each vote which method would be used. There was no second to the motion. After a discussion as to procedures to be used, Mr. Gibbs seconded the motion so that business could be conducted. Mr. Robison asked for an explanation of what this means to the group and it was explained that since PCE had paid approximately 79% of the assessment over the past five years, it would have approximately 79% of the total vote. After a brief discussion, it was determined that the vote on all questions would be by assessment.

Chairman Holt asked Mr. Homan to explain the procedures for appointing a Water Master for the District. Mr. Homan explained that the members of the District could elect a watermaster, who would normally then be appointed by the Director of IDWR. In the event that the District could not agree on a watermaster, the Director would appoint one of his own choosing. The Director could also choose someone else if he decided not to appoint the elected watermaster. Mr. Gibbs moved to elect Pete Peterson. Mr. Moser seconded. After a show of support for Mr. Peterson by all the irrigators in the room, a vote was taken. All irrigators voted for Mr. Peterson. PCE cast its 79% of the vote against. Motion failed.

Mr. Gibbs moved to pay Mr. Peterson the amount of the demand letter sent to the District by Mr. Peterson's attorney (\$9,052.31). Seconded by Mr. Wheeler. Mr. Peterson presented a signed copy of the agreement for services to PCE for 2005 which he said had been used in the past, stating that the agreement had been honored in previous years. Mr. Baldwin stated he felt that all understood that with the increase in salary to \$42,000, the expenses would not continue as in previous years. He explained the concerns of PCE being double billed for the expenses. All irrigators voted for the motion, PCE voted against. Motion failed. Mr. Gibbs questioned the need for an audit of the accounting records and said that regardless of the outcome of the audit, he felt the District should pay Mr. Peterson the amount of his demand. Mr. Sample spoke for PCE and indicated that PCE felt the payment is not owed and should not be paid as presented.

Mr. Gibbs moved that if Water District #11 did not pay the demand amount, the irrigators would be absolved from any additional expenses incurred by the District in defending any action taken by Mr. Peterson and that PCE pay all such costs including additional damages and attorney fees associated with the demand. Second by Mr. Moser. There was a request from the floor to explain the nature of the demand by Mr. Peterson. Mr. Sample explained that Mr. Petersen had billed the District for the travel expenses incurred in his job, then billed a certain additional amount to be paid from PCE funds for the same expenses. Mr. Gibbs said that it did not matter whether they were the same or not but that the District had agreed to pay them and that agreement should be honored. Mr. Bornemeier stated that it does matter that the expenses were handled properly, because PCE is a public company subject to outside scrutiny. Mr. Peterson asserted that the agreement had two parts: 1) The District wages and expenses and 2) the contract with PCE to provide storage water. The District was to pay expenses and then PCE pay one-third of that for expenses in addition to the District's payment. One half the salary was to be paid by the District and one half by PCE. He asserted that there is no record of this in

the District because it was to be handled outside of the District. Mr. Homan indicated he did not fully understand the arrangement. Mr. Peterson admitted that the 2005 meeting terminated without a resolution to the discussion and that the Treasurer listed the \$13,250 paid as an advance for expenses then proceeded to deduct submitted expenses from the advance. He had explained to the then Treasurer (Mr. Gerald Brown), that the \$13,250 was not an advance, but was PCE's share of expenses over and above what the District paid. Mr. Gibbs indicated that this was the first year to combine the budgets inside the District and that was causing the confusion. Mr. Moses stated that PCE had paid the District and that all salary and expenses were paid by the District in 2006. Mr. Peterson said that in past years he had received payments separately from the two entities. Mr. Budge reminded the group that the motion before the group was to limit the irrigator's exposure by paying the expenses now. Mr. Homan asked if PCE would agree to the payment if it were re-characterized. Mr. Sample said he thought so if Mr. Peterson would release all claims against the District and PCE. He further suggested a recess in order to caucus concerning the issue. Meeting recessed at approximately 3:00 p.m.

The annual meeting resumed at approximately 3:05 p.m. after which Mr. Gibbs agreed to withdraw his last motion if the second would agree to withdraw his second. Mr. Moser agreed to withdraw his second. Mr. Sample moved that Water District #11 pay the amount demanded by Mr. Peterson (\$9,052.31) upon receipt of the signed release of all claims against Water District #11 and PCE by Mr. Peterson. Mr. Gibbs seconded. There followed a short discussion in which Mr. Peterson said he was satisfied. Mr. Sample indicated that PCE would suspend the rule to vote by assessment and requested a simple voice vote. Vote was unanimous in the affirmative.

Chairman Holt stated that PCE was proposing a number of resolutions in order to improve District operations.

#### **Resolution 1**

WHEREAS, the treasurer of Water District #11, Austin Moses, has indicated that it is in the best interest of the District and consistent with standard business practice to have a fixed fiscal year for accounting purposes,

NOW, THEREFORE, BE IT RESOLVED by the water users of Water District #11, meeting in regular session this sixth day of February 2007, that the fiscal year for Water District #11 shall be from February 1 to January 31 of the following year. The fiscal year beginning February 1, 2007 shall be termed the 2007 fiscal year.

Following the reading of the motion, Mr. Gibbs moved to approve resolution 1. Mr. Robison seconded. All approved.

#### **Resolution 2**

WHEREAS, the Water District had previously resolved to implement a minimum assessment amount in excess of the maximum of fifty dollars (\$50) allowed by Idaho Code Section 42.612(4)

NOW, THEREFORE, BE IT RESOLVED by the water users of Water District #11, that the minimum assessment for watermaster services be fifty dollars (\$50)

Following the reading of Resolution 2, Mr. Peterson stated that he had raised the minimum to \$100 because the smaller fee was not fair to the larger water users. Mr. Swank indicated that the way to change the minimum from the \$50 was to change the State statute. There was a short discussion after which Mr. Semanko said he would take the suggestion to the legislative committee of the Idaho Water Users Association and report back on their recommendation. Mr. Baldwin moved to approve Resolution 2. Mr. Ream seconded. All approved.

### **Resolution 3**

WHEREAS, Idaho Code Section 67-450B(2c) sets a minimum requirement of a biennial financial review of all previous years for which the annual budget exceeds fifty thousand dollars (\$50,000), but does not exceed one hundred thousand dollars (\$100,000) and

WHEREAS, the water users of Water District #11 desire to go beyond the minimum level required by Idaho Code Section 67-450B(2c) and perform an audit of the period from 1 February 2005 to 7 February 2006 and

WHEREAS, Deaton and Company of Pocatello, an accounting firm qualified to perform audits under Idaho state law, has indicated that such an audit would be approximately between \$2,000 and \$2,200, plus out of pocket costs and

WHEREAS, an amount exceeding this estimate has been previously budgeted and has not been expended,

NOW, THEREFORE, BE IT RESOLVED by the water users of Water district #11, that Water District #11 contract with Deaton and Company of Pocatello to perform an audit of the period from 1 February 2005 to 7 February 2006 and

BE IT FURTHER RESOLVED that the minimum requirement of a biennial financial review of each fiscal year since the previous review report or audit for which the annual budget exceeds fifty thousand dollars (\$50,000), but does not exceed one hundred thousand dollars (\$100,000), shall be budgeted and performed in future years as overseen by the Treasurer of the Water District #11 but does not preclude future more extensive audits as may be desired and directed by the water users in future resolutions.

Mr. Gibbs questioned the low limits in the statute and asked if there were the possibility of them being raised. Mr. Swank said he felt the mood was to require more audits, not fewer. Mr. Homan explained that the statute applies to all government entities, not just water districts. Following a short discussion, Mr. Sample proposed to withdraw the motion and propose it at the next meeting. Mr. Gibbs asked what the Treasurer would prefer. Mr. Moses responded that an audit or review would protect the Treasurer somewhat and would be appreciated. Mr. Sample moved to approve Resolution 3. Mr. Gibbs seconded. All approved.

**Resolution 4**

WHEREAS, the Water District currently has no expense policy for the watermaster clarifying the intent of the water users beyond the underlying requirements in Idaho Code Section 42-619(8), and

WHEREAS, Idaho Code Section 42-619(8) sets minimum standards for an expense policy, but an expense policy setting more strict standards may be set, and

WHEREAS, the water users desire that all expenses be documented and reimbursed in accordance with all applicable laws, best business practices and the expense policy attached herein, and

WHEREAS, the expense policy attached herein exceeds the minimum standards set by Idaho Code Section 42-619(8) and is in the best interests of Water district #11

NOW, THEREFORE, BE IT RESOLVED by the water users of Water District #11, that the Advisory Committee be empowered and directed to review PacifiCorp's proposed expense policy dated January 26, 2007, and make recommendations regarding its adoption to Water District #11 no later than March 1, 2007.

Mr. Sample moved to adopt Resolution 4. Mr. Gibbs seconded. Following some discussion, Mr. Larsen asked if the Advisory Committee could meet by conference call. Mr. Sample responded affirmatively. Mr. Robison asked how these were arranged and held. Mr. Baldwin responded that because of the distances involved, meetings were routinely held by conference call. All approved the motion.

**Resolution 5**

WHEREAS, the owner of a reservoir desiring delivery of storage water through natural channels in the State of Idaho is responsible to pay for delivery of stored water as is the case for PacifiCorp, a water user in Water District #11, who is the owner and operator of the Bear Lake Reservoir and has a decreed right to use the natural channel of the Bear River to deliver storage water for supplemental irrigation to certain irrigators in Water District #11 and Utah and

WHEREAS Idaho Code Section 42-801 allows storage water delivery assessments to be based on the cost of delivering a unit of water and

WHEREAS, water accounting (the Bear River interstate model) performed by the Idaho Department of Water Resources allows determination of the relative amounts of natural flow and supplemental water delivered to each water user, and

NOW, THEREFORE, BE IT RESOLVED by the water users of Water District #11, all salary, benefits and expenses for watermaster services and any other expenses incurred for district purposes for delivery of both storage water and natural flow be paid through Water District #11 and reflected in the budget and financial statements of the District

BE IT FURTHER RESOLVED that:

1. The fee for watermaster services and all associated expenses to deliver storage water be proportional to the 24-hour second-foot volume of water delivered in the preceding year and shall be paid for by the owner of the reservoir;
2. The fee for watermaster services and all associated expenses to deliver storage water be computed in the same manner as natural flow assessments as specified in Idaho Code Section 42-801 and
3. The sum of the natural flow assessment and storage water delivery fees shall cover all salary, benefits and expenses of the District and no water user shall make non-budgeted or external payments to Water District #11 personnel.

Following the reading of Resolution 5, Mr. Peterson asserted that the salaries and expenses cannot be combined because the water users do not have a contract with PCE and that to make such an agreement would be illegal. Mr. Wheeler responded that the users do have a contract with PCE. Mr. Baldwin said the contracts between PCE and the water users would not change. Mr. Peterson continued to assert that the proposed arrangement would be illegal in his opinion. After further discussion, Mr. Baldwin withdrew the resolution until a future meeting.

#### **Resolution 6**

WHEREAS, the current method of computing the assessment is unduly cumbersome and results in unnecessary fluctuating assessments, and

WHEREAS, water diversion information exists upon which the assessment can be fairly and accurately determined, and

WHEREAS, Idaho Code Section 42-612(5) allows the simplification of the assessment procedure by not requiring the carrying forward of debits or credits,

NOW, THEREFORE, BE IT RESOLVED by the water users of Water District #11, that all future assessments beginning with the 2008 assessments shall be based on the previous year's 24-hour second-foot volume of water delivered and

BE IT FURTHER RESOLVED that for the purpose of computing assessments for the 2007 fiscal year, credits and debits shall be calculated and assessments adjusted for the actual 2006 water use.

PCE withdrew resolution 6 until a future meeting

#### **Resolution 7**

WHEREAS, watermaster services are required for the operation of the District;

WHEREAS, no watermaster was elected in the course of the annual meeting; and

WHEREAS, the advisory committee serves as advisors to the Director of the Department of Water Resources and may be authorized by the water users to carry out policies as set forth in a resolution

NOW, THEREFORE, BE IT RESOLVED by the water users of Water District #11, that the advisory committee be empowered to solicit and identify watermaster candidates for Water District #11; and

BE IT FURTHER RESOLVED that:

1. The advisory committee be empowered to solicit and screen candidates for the watermaster position. The advisory committee is further directed to seek to make a unanimous recommendation to the District on a preferred candidate no later than March 1, 2007;
2. The advisory committee is directed to obtain a bid from the Idaho Department of Water Resources to provide watermaster services to the District for the 2007 irrigation season. The advisory committee is further directed to present this bid to the District no later than March 1, 2007;
3. The advisory committee is directed to request that the Idaho Department of Water Resources schedule a special District meeting on or about March 7, 2007, to elect a new watermaster.

After the reading of Resolution 7, Mr. Semanko reminded those present that if the District did not choose a watermaster, the Director would pick one of his own choosing. Chairman Holt asked how votes would be counted on the advisory committee? Mr. Bornemeier said that PCE was trying to minimize the use of vote by assessment. Mr. Sample agreed, saying that PCE was not choosing a watermaster and every effort is being made to work with the irrigators. Mr. Robison pointed out that if the irrigators and PCE cannot agree, they do have a legal right to vote by assessment. Motion was made by PCE to approve Resolution 7. Mr. Gibbs seconded. A question was raised if the watermaster could be appointed for multiple years. Mr. Semanko clarified that the watermaster appointment is for one year only. Further discussion was held around the possibility, now that the difficulty with Mr. Peterson had been worked out, whether he would be a viable candidate. Mr. Sample responded by saying that PCE had not changed its opposition to Mr. Peterson. Vote on Resolution 7 was unanimous in the affirmative.

Mr. Robison reminded the group that PCE still has the final vote on the watermaster appointment. Mr. Semanko stated that actually the Director has the final say in the appointment, but was usually willing to appoint the recommendation of the District. A question came from the irrigators as to who would do the training of a new watermaster? Mr. Swank replied that the IDWR may have to perform the job and that they certainly were willing to do so.

Mr. Sample said that since Resolution 8 dealt with the demand letter from Mr. Peterson to the District, and that that issue had been resolved, it would be withdrawn.

Mr. Gibbs stated that the final items of business should be the watermaster and financial reports

Mr. Peterson presented the watermaster report to those present and reviewed with the group the summary of the report. He recommended that water measurement for PCE be started at the same time as the irrigation season, whereas in the past it had been started earlier. Mr. Robison noted that this year is not looking good for water runoff and asked Mr. Peterson his opinion of how bad it will be. Mr. Peterson stated that the ground moisture was low, the snow pack under 50% in depth, and the moisture content of the snow pack also low because of the recent below zero temperatures. Mr. Robison said at a meeting he attended, the estimate was placed at 39%. Mr. Larsen moved to approve the watermaster report as presented. Mr. Moser seconded. All approved.

Mr. Moses presented the financial report, noting the net assets of the District at \$29,851. Mr. Petersen observed that the salary and expenses for the District and PCE were combined, which, in his opinion was illegal. Mr. Swank responded that the District can do so if it desired. Mr. Moser moved to accept the financial report as presented. Mr. Gibbs seconded. All approved.

Mr. Baldwin presented the water outlook for the District, summarizing by saying that although the water runoff was not healthy, the storage levels were high, and that with a wet spring and a little conservation, there would be sufficient for a full crop.

Mr. Larsen moved to adjourn. Mr. Fox seconded. Meeting adjourned at approximately 4:15 p.m.

Minutes by Austin Moses